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HOUSE BILL 355

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Al Park

AN ACT

**RELATING TO PUBLIC WORKS; ENACTING THE FALSE CLAIMS ACT;
PROVIDING FOR PENALTIES; AUTHORIZING INVESTIGATIONS BY THE
ATTORNEY GENERAL; AUTHORIZING CIVIL ACTIONS; CREATING THE FALSE
CLAIMS ACT FUND.**

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

**Section 1. SHORT TITLE.--This act may be cited as the
"False Claims Act".**

Section 2. DEFINITIONS.--As used in the False Claims Act:

**A. "claim" means a request or demand for money,
property or services made to an employee, officer or agent of
the state or a political subdivision of the state or to a
contractor, grantee or other recipient, whether under contract
or not, if any portion of the money, property or services
requested or demanded issued or would issue from or was**

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1 provided by the state or any political subdivision of the
2 state;

3 B. "knowing" and "knowingly" mean that a person,
4 with respect to information:

5 (1) has actual knowledge of the information;

6 (2) acts in deliberate ignorance of the truth
7 or falsity of the information; or

8 (3) acts in reckless disregard of the truth or
9 falsity of the information;

10 C. "qui tam" means an action brought under a
11 statute that allows a person to sue for a recovery, part of
12 which the state or a political subdivision of the state will
13 receive;

14 D. "political subdivision" includes any public
15 agency or city, city and county, county, tax or assessment
16 district, or legally authorized local governmental entity with
17 jurisdictional boundaries;

18 E. "political subdivision funds" means a portion of
19 the money, property or services requested or demanded by a
20 claimant to be issued from or provided by a political
21 subdivision of the state;

22 F. "prosecuting authority" means any public agency
23 general counsel, county counsel, city attorney or local
24 government official charged with investigating, filing and
25 conducting civil legal proceedings on behalf of, or in the name

1 of, a particular political subdivision; and

2 G. "state funds" means a portion of the money,
3 property or services requested or demanded to be issued from or
4 provided by the state.

5 Section 3. LIABILITY FOR DAMAGES. --

6 A. A person who commits any of the acts in this
7 section shall be liable to the state or to a political
8 subdivision of the state for three times the amount of damages
9 that the state or the political subdivision of the state
10 sustains because of the act of that person. A person shall
11 also be liable to the state or to a political subdivision of
12 the state for the costs of a civil action brought to recover
13 any of those penalties or damages and may be liable to the
14 state or the political subdivision of the state for a civil
15 penalty of up to ten thousand dollars (\$10,000) for each false
16 claim if a person:

17 (1) knowingly presents or causes to be
18 presented to an officer or employee of the state or of a
19 political subdivision of the state a false claim for payment or
20 approval;

21 (2) knowingly makes or causes to be made, uses
22 or used a false record or statement to get a false claim paid
23 or approved by the state or by a political subdivision of the state;

24 (3) conspires to defraud the state or a
25 political subdivision of the state by getting a false claim

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1 allowed or paid by the state or by a political subdivision of
2 the state;

3 (4) has possession, custody or control of
4 public property or money used or to be used by the state or by
5 a political subdivision of the state and knowingly delivers or
6 causes to be delivered less property than the amount for which
7 the person receives a certificate or receipt;

8 (5) is authorized to make or deliver a
9 document certifying receipt of property used or to be used by
10 the state or by a political subdivision of the state and
11 knowingly makes or delivers a receipt that falsely represents
12 the property used or to be used;

13 (6) knowingly buys or receives as a pledge of
14 an obligation or debt public property from any person who
15 lawfully may not sell or pledge the property;

16 (7) knowingly makes or causes to be made, uses
17 or used a false record or statement to conceal, avoid or
18 decrease an obligation to pay or transmit money or property to
19 the state or to a political subdivision of the state; or

20 (8) is a beneficiary of an inadvertent
21 submission of a false claim to the state or a political
22 subdivision of the state, subsequently discovers the falsity of
23 the claim and fails to disclose the false claim to the state or
24 a political subdivision of the state within a reasonable time
25 after discovery of the false claim

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1 B. Notwithstanding the provisions of Subsection A
2 of this section, the court may assess not less than two times
3 and not more than three times the amount of damages that the
4 state or a political subdivision of the state sustains because
5 of an act of a person pursuant to Subsection A of this section
6 but may not assess a civil penalty if the court finds all of
7 the following:

8 (1) the person committing the violation
9 furnishes officials of the state or of a political subdivision
10 of the state responsible for investigating false claims
11 violations with all information known to that person about the
12 violation within thirty days after the date on which the person
13 first obtained the information;

14 (2) the person fully cooperates with any
15 investigation by the state or a political subdivision of the
16 state of the violation; and

17 (3) at the time the person furnished the state
18 or the political subdivision of the state with information
19 about the violation, no criminal prosecution, civil action or
20 administrative action had commenced with respect to the
21 violation and the person did not have actual knowledge of the
22 existence of an investigation into the violation.

23 C. Proof of specific intent to defraud is not
24 required for liability for damages.

25 D. Liability pursuant to this section shall be

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1 joint and several for any act committed by two or more persons.

2 E. This section does not apply to any controversy
3 involving an amount of less than five hundred dollars (\$500) in
4 value.

5 F. For purposes of this section, "controversy"
6 means any one or more false claims submitted by the same person
7 in violation of the False Claims Act.

8 G. This section does not apply to claims, records
9 or statements made pursuant to the Workers' Compensation Act.

10 H. This section does not apply to claims, records
11 or statements made under Chapter 7 NMSA 1978.

12 Section 4. INVESTIGATIONS--CIVIL ACTIONS.--

13 A. The attorney general shall investigate
14 violations under the False Claims Act involving state funds.
15 If the attorney general finds that a person has violated or is
16 violating the False Claims Act, the attorney general may bring
17 a civil action pursuant to that act against that person.

18 B. If the attorney general brings a civil action
19 under the False Claims Act on a claim involving political
20 subdivision funds as well as state funds, the attorney general
21 shall on the same date that the complaint is filed in this
22 action serve by certified mail, return receipt requested, a
23 copy of the complaint on the appropriate prosecuting authority.

24 C. A prosecuting authority shall have the right to
25 intervene in an action brought by the attorney general pursuant

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1 to Subsections A through C of this section within sixty days
2 after receipt of a complaint pursuant to Subsection B of this
3 section. The court may permit intervention thereafter upon a
4 showing that all of the requirements for intervention under the
5 New Mexico rules of civil procedure have been met.

6 D. A prosecuting authority of a political
7 subdivision of the state shall investigate violations under the
8 False Claims Act involving political subdivision funds. If the
9 prosecuting authority finds that a person has violated or is
10 violating the False Claims Act, the prosecuting authority may
11 bring a civil action pursuant to this section against that person.

12 E. If a prosecuting authority brings a civil action
13 under this section on a claim involving state funds as well as
14 political subdivision funds, the prosecuting authority shall on
15 the same date that the complaint is filed in this action serve
16 a copy of the complaint on the attorney general.

17 F. Within sixty days after receiving a complaint
18 pursuant to Subsection E of this section, the attorney general
19 shall:

20 (1) notify the court that the attorney general
21 intends to proceed with the action, in which case the attorney
22 general shall assume primary responsibility for conducting the
23 action and the prosecuting authority shall have the right to
24 continue as a party; or

25 (2) notify the court that the attorney general

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1 declines to proceed with the action, in which case the
2 prosecuting authority shall have the right to conduct the action.

3 G. A person may bring a civil action for a
4 violation pursuant to the False Claims Act on the person's
5 behalf and either the state of New Mexico, in the name of the
6 state if any state funds are involved, or a political
7 subdivision of the state, in the name of the political
8 subdivision of the state if political subdivision funds are
9 exclusively involved. The person bringing the action shall be
10 referred to as the qui tam plaintiff. Once filed, the action
11 may be dismissed only with the written consent of the court
12 after taking into account the best interests of the parties
13 involved and the public purposes behind the False Claims Act.

14 H. A complaint filed by a person pursuant to
15 Subsections G through W of this section shall be filed in New
16 Mexico district court in camera and may remain under seal for
17 up to sixty days. No service shall be made on the defendant
18 until after the complaint is unsealed.

19 I. On the same day as a complaint is filed pursuant
20 to Subsection H of this section, the qui tam plaintiff shall
21 serve by certified mail, return receipt requested, the attorney
22 general with a copy of the complaint and a written disclosure
23 of substantially all material evidence and information the
24 person possesses.

25 J. Within sixty days after receiving a complaint

1 and written disclosure of material evidence and information
2 alleging violations that involve state funds but not political
3 subdivision funds, the attorney general may elect to intervene
4 and proceed with the action.

5 K. The attorney general may, for good cause, move
6 the court for extensions of the time during which a complaint
7 remains under seal pursuant to Subsection H of this section.
8 The motion may be supported by affidavits or other submissions
9 in camera.

10 L. Before expiration of the sixty-day period
11 pursuant to Subjection J of this section or any extensions
12 obtained pursuant to Subsection K of this section, the attorney
13 general shall:

14 (1) notify the court that the attorney general
15 intends to proceed with the action, in which case the action
16 shall be conducted by the attorney general and the seal shall
17 be lifted; or

18 (2) notify the court that the attorney general
19 declines to proceed with the action, in which case the seal
20 shall be lifted and the qui tam plaintiff shall have the right
21 to conduct the action.

22 M Within fifteen days after receiving a complaint
23 alleging violations that exclusively involve political
24 subdivision funds, the attorney general shall forward copies of
25 the complaint and written disclosure of material evidence and

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1 information to the appropriate prosecuting authority for
2 disposition and shall notify the qui tam plaintiff of the transfer.

3 N. Within forty-five days after the attorney
4 general forwards a complaint and written disclosure pursuant to
5 Subsection M of this section, the prosecuting authority may
6 elect to intervene and proceed with the action.

7 O. A prosecuting authority may, for good cause,
8 move for extensions of the time during which the complaint
9 remains under seal. The motion may be supported by affidavits
10 or other submissions in camera.

11 P. Before the expiration of the forty-five-day
12 period pursuant to Subsection N of this section or any
13 extensions obtained pursuant to Subsection O of this section,
14 the prosecuting authority shall:

15 (1) notify the court that it intends to
16 proceed with the action, in which case the action shall be
17 conducted by the prosecuting authority and the seal shall be
18 lifted; or

19 (2) notify the court that it declines to
20 proceed with the action, in which case the seal shall be lifted
21 and the qui tam plaintiff shall have the right to conduct the action.

22 Q. Within fifteen days after receiving a complaint
23 alleging violations that involve both state and political
24 subdivision funds, the attorney general shall forward copies of
25 the complaint and written disclosure to the appropriate

1 prosecuting authority and shall coordinate the attorney
2 general's review and investigation with those of the
3 prosecuting authority.

4 R. Within sixty days after receiving a complaint
5 and written disclosure of material evidence and information
6 alleging violations that involve both state and political
7 subdivision funds, the attorney general or the prosecuting
8 authority may elect to intervene and proceed with an action.

9 S. The attorney general or a prosecuting authority
10 may, for good cause, move the court for extensions of the time
11 during which a complaint remains under seal pursuant to
12 Subsection H of this section. The motion may be supported by
13 affidavits or other submissions in camera.

14 T. Before the expiration of the sixty-day period
15 pursuant to Subsection R of this section or any extensions
16 obtained pursuant to Subsection S of this section, the attorney
17 general shall:

18 (1) notify the court that the attorney general
19 intends to proceed with the action, in which case the action
20 shall be conducted by the attorney general and the seal shall
21 be lifted;

22 (2) notify the court that the attorney general
23 declines to proceed with the action but that the prosecuting
24 authority of the political subdivision of the state intends to
25 proceed with an action, in which case the seal shall be lifted

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1 and the action shall be conducted by the prosecuting authority;
2 or

3 (3) notify the court that both the attorney
4 general and the prosecuting authority decline to proceed with
5 an action, in which case the seal shall be lifted and the qui
6 tam plaintiff shall have the right to conduct an action.

7 U. If the attorney general proceeds with an action
8 pursuant to Paragraph (1) of Subsection T of this section, a
9 prosecuting authority of a political subdivision of the state
10 shall be permitted to intervene in the action within sixty days
11 after the attorney general notifies the court of the attorney
12 general's intentions. The court may authorize intervention
13 upon a showing that all the requirements for intervention have
14 been met pursuant to the New Mexico rules of civil procedure.

15 V. The defendant shall not be required to respond
16 to a complaint filed under this section until thirty days after
17 a complaint is unsealed and served upon the defendant pursuant
18 to the New Mexico rules of civil procedure requirements of service.

19 W. When a person brings an action pursuant to
20 Subsections G through V of this section, no other person may
21 bring a related action based on the facts underlying the
22 pending action.

23 X. No court shall have jurisdiction over an action
24 brought pursuant to Subsections G through W of this section
25 against a member of the New Mexico senate or New Mexico house

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1 of representatives, a member of the state judiciary, an elected
2 official in the executive branch of the state or a member of
3 any political subdivision of the state if the action is based
4 on evidence or information known to the state or a political
5 subdivision of the state when the action was brought.

6 Y. A person may not bring an action pursuant to
7 Subsections G through W of this section that is based upon
8 allegations or transactions that are the subject of a civil
9 suit or an administrative civil money penalty proceeding in
10 which the state or a political subdivision of the state is
11 already a party.

12 Z. No court shall have jurisdiction over an action
13 brought under the False Claims Act based on the public
14 disclosure of allegations or transactions in a criminal, civil
15 or administrative hearing or an investigation, report, hearing
16 or audit conducted by or at the request of the legislature, a
17 state agency, the governing body of a political subdivision of
18 the state or the news media, unless the action is brought by
19 the attorney general or a prosecuting authority of a political
20 subdivision of the state or the person bringing the action is
21 an original source of the information. For purposes of this
22 subsection, "original source" means an individual who has
23 direct and independent knowledge of the information on which
24 the allegations are based, who voluntarily provides the
25 information to the state or a political subdivision of the

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1 state before filing an action based on that information and who
2 provides the information that acts as the basis or catalyst for
3 the investigation, hearing, audit or report that led to the
4 public disclosure as described in this subsection.

5 AA. No court shall have jurisdiction over an action
6 brought pursuant to Subsections G through W of this section
7 based on information discovered by a present or former employee
8 of the state or political subdivision of the state during the
9 course of the employee's employment unless that employee first,
10 in good faith, exhausted existing internal procedures for
11 reporting and seeking recovery of the falsely claimed sums
12 through official channels and unless the state or the political
13 subdivision of the state failed to act on the information
14 provided within a reasonable period of time.

15 BB. If the state or a political subdivision of the
16 state proceeds with an action, the state or political
17 subdivision of the state shall have the primary responsibility
18 for prosecuting the action. The qui tam plaintiff shall have
19 the right to continue as a full party to the action.

20 CC. The state or a political subdivision of the
21 state may seek to dismiss an action for good cause
22 notwithstanding the objections of the qui tam plaintiff if the
23 qui tam plaintiff has been notified by the state or the
24 political subdivision of the state of the filing of the motion
25 and the court has provided the qui tam plaintiff with an

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1 opportunity to oppose the motion and present evidence at a hearing.

2 DD. The state or a political subdivision of the
3 state may settle an action with a defendant notwithstanding the
4 objections of the qui tam plaintiff if the court determines
5 after a hearing providing the qui tam plaintiff an opportunity
6 to present evidence that the proposed settlement is fair,
7 adequate and reasonable under all of the circumstances.

8 EE. If the state or a political subdivision of the
9 state elects not to proceed, the qui tam plaintiff shall have
10 the same right to conduct an action as the attorney general or
11 prosecuting authority would have had if it had chosen to
12 proceed pursuant to Subsections G through W of this section.
13 If the state or the political subdivision of the state so
14 requests, and at the state's or political subdivision's
15 expense, the state or the political subdivision of the state
16 shall be served with copies of all pleadings filed in the
17 action and supplied with copies of all deposition transcripts.

18 FF. Upon timely application, the court shall permit
19 the state or a political subdivision of the state to intervene
20 in an action with which it had initially declined to proceed if
21 the interest of the state or the political subdivision of the
22 state in the recovery of property or funds involved is not
23 adequately being represented by the qui tam plaintiff.

24 GG. If the state or a political subdivision of the
25 state is allowed to intervene pursuant to Subsection FF of this

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1 section, the qui tam plaintiff shall retain principal
2 responsibility for the action and the recovery of the parties
3 shall be determined as if the state or the political
4 subdivision of the state had elected not to proceed.

5 HH. If the attorney general initiates an action
6 pursuant to Subsections A through C of this section or assumes
7 control of an action initiated by a prosecuting authority
8 pursuant to Paragraph (1) of Subsection F of this section, the
9 office of the attorney general shall receive a fixed thirty-
10 three percent of the proceeds of the action or settlement of
11 the claim, which shall be used to support its ongoing
12 investigation and prosecution of false claims.

13 II. If a prosecuting authority initiates and
14 conducts an action pursuant to Subsections D through F of this
15 section, the office of the prosecuting authority shall receive
16 a fixed thirty-three percent of the proceeds of the action or
17 settlement of the claim, which shall be used to support the
18 attorney general's ongoing investigation and prosecution of
19 false claims.

20 JJ. If a prosecuting authority intervenes in an
21 action initiated by the attorney general pursuant to Subsection
22 C of this section, or remains a party to an action assumed by
23 the attorney general pursuant Paragraph (1) of Subsection F of
24 this section, the court may award the office of the prosecuting
25 authority a portion of the attorney general's fixed thirty-

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1 three percent of the recovery pursuant to Subsection HH of this
2 section, taking into account the prosecuting authority's role
3 in investigating and conducting the action.

4 KK. If the state or a political subdivision of the
5 state proceeds with an action brought by a qui tam plaintiff
6 pursuant to Subsections C through W of this section, the qui
7 tam plaintiff shall, pursuant to Subsections MM and NN of this
8 section, receive at least fifteen percent but not more than
9 thirty-three percent of the proceeds of the action or
10 settlement of the claim, depending upon the extent to which the
11 qui tam plaintiff substantially contributes to the prosecution
12 of the action. When conducting the action, the office of the
13 attorney general or the office of the prosecuting authority of
14 a political subdivision of the state shall receive a fixed
15 thirty-three percent of the proceeds of the action or
16 settlement of the claim, which shall be used to support the
17 attorney general's ongoing investigation and prosecution of
18 false claims made against the state or a political subdivision
19 of the state. When both the attorney general and a prosecuting
20 authority of a political subdivision of the state are involved
21 in a qui tam action pursuant to Subsection R of this section,
22 the court, at its discretion, may award the prosecuting
23 authority a portion of the attorney general's fixed thirty-
24 three percent of the recovery, taking into account the
25 prosecuting authority's contribution to investigating and

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1 conducting the action.

2 LL. If the state or a political subdivision of the
3 state does not proceed with an action pursuant to Subsections G
4 through W of this section, the qui tam plaintiff shall,
5 pursuant to Subsections MM and NN of this section, receive an
6 amount that the court decides is reasonable for collecting the
7 civil penalty and damages on behalf of the government. The
8 amount shall be not less than twenty-five percent and not more
9 than fifty percent of the proceeds of the action or settlement
10 and shall be paid out of these proceeds.

11 MM If an action is one provided for pursuant to
12 Subsection AA of this section, the present or former employee
13 of the state or a political subdivision of the state is not
14 entitled to any minimum guaranteed recovery from the proceeds.
15 The court, however, may award the qui tam plaintiff those sums
16 from the proceeds as it considers appropriate, but in no case
17 more than thirty-three percent of the proceeds if the state or
18 a political subdivision of the state goes forth with an action
19 or fifty percent if the state or a political subdivision of the
20 state declines to go forth, taking into account the
21 significance of the information, the role of the qui tam
22 plaintiff in advancing the case to litigation and the scope of
23 and response to the employee's attempts to report and gain
24 recovery of the falsely claimed funds through official channels.

25 NN. If an action is one that the court finds to be

1 based primarily on information from a present or former
2 employee who actively participated in the fraudulent activity,
3 the employee is not entitled to any minimum guaranteed recovery
4 from the proceeds. The court, however, may award the qui tam
5 plaintiff any sums from the proceeds that it considers
6 appropriate but in no case more than thirty-three percent of
7 the proceeds if the state or a political subdivision of the
8 state goes forth with an action or fifty percent if the state
9 or a political subdivision of the state declines to go forth,
10 taking into account the significance of the information, the
11 role of the qui tam plaintiff in advancing the case to
12 litigation, the scope of the present or past employee's
13 involvement in the fraudulent activity, the employee's attempts
14 to avoid or resist the activity and all other circumstances
15 surrounding the activity.

16 00. The portion of the recovery not distributed
17 pursuant to Subsections HH through NN of this section shall
18 revert to the state if the underlying false claims involved
19 state funds exclusively and to the political subdivision of the
20 state if the underlying false claims involved political
21 subdivision funds exclusively. If the violation involved both
22 state and political subdivision funds, the court shall make an
23 apportionment between the state and the political subdivision
24 based on their relative share of the funds falsely claimed.

25 PP. If the state, a political subdivision of the

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1 state or the qui tam plaintiff prevails in or settles an action
2 pursuant to Subsections G through W of this section, the qui
3 tam plaintiff shall receive an amount for reasonable expenses
4 that the court finds to have been necessarily incurred plus
5 reasonable costs and attorney fees. All expenses, costs and
6 fees shall be awarded against the defendant and under no
7 circumstances shall they be the responsibility of the state or
8 the political subdivision of the state.

9 QQ. If the state, a political subdivision of the
10 state or the qui tam plaintiff proceeds with an action, the
11 court may award to the defendant the defendant's reasonable
12 attorney fees and expenses against the party that proceeded
13 with the action if the defendant prevails in the action and the
14 court finds that the claim was clearly frivolous, clearly
15 vexatious or brought solely for purposes of harassment.

16 RR. The court may stay an act of discovery of a
17 person initiating an action for a period of not more than sixty
18 days if the attorney general or prosecuting authority shows
19 that the act of discovery would interfere with an investigation
20 or a prosecution of a criminal or civil matter arising out of
21 the same facts, regardless of whether the attorney general or
22 prosecuting authority proceeds with an action. This showing
23 shall be conducted in camera. The court may extend a sixty-day
24 period upon a further showing in camera that the attorney
25 general or prosecuting authority has pursued the criminal or

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1 civil investigation or proceedings with reasonable diligence
2 and the proposed discovery in the civil action will interfere
3 with the ongoing criminal or civil investigation or
4 proceedings.

5 SS. Upon a showing by the attorney general or
6 prosecuting authority that unrestricted participation during
7 the course of the litigation by the person initiating the
8 action would interfere with or unduly delay the attorney
9 general's or prosecuting authority's prosecution of the case,
10 or would be repetitious, irrelevant or for purposes of
11 harassment, the court may, in its discretion, impose
12 limitations on the person's participation, including the following:

- 13 (1) limiting the number of witnesses the
14 person may call;
- 15 (2) limiting the length of the testimony of
16 the witnesses;
- 17 (3) limiting the person's cross-examination of
18 witnesses; or
- 19 (4) otherwise limiting the participation by
20 the person in the litigation.

21 TT. As used in this section, "proceeds" include
22 civil penalties as well as double or treble damages pursuant to
23 the False Claims Act.

24 Section 5. FALSE CLAIMS ACT FUND CREATED--PURPOSES.--The
25 "False Claims Act fund" is created in the state treasury. All

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1 proceeds from the action or settlement of the claim by the
2 attorney general pursuant to the False Claims Act shall be
3 deposited with the state treasurer into the False Claims Act
4 fund. Money in the fund is subject to appropriation by the
5 legislature to the attorney general and shall be used to
6 support the ongoing investigation and prosecution of false
7 claims in furtherance of the False Claims Act.

8 Section 6. PROHIBITED ACTIONS BY EMPLOYERS-- REMEDIES. --

9 A. An employer shall not make, adopt or enforce any
10 rule, regulation or policy preventing an employee from
11 disclosing information to a government or law enforcement
12 agency or from acting in furtherance of a false claims action,
13 including investigating, initiating, testifying or assisting in
14 an action filed or to be filed under the False Claims Act.

15 B. An employer shall not discharge, demote,
16 suspend, threaten, harass, deny promotion to or in any other
17 manner discriminate against an employee in the terms and
18 conditions of employment because of lawful acts done by the
19 employee or on behalf of the employee or others in disclosing
20 information to a government or a law enforcement agency or in
21 furthering a false claims action, including investigation for,
22 initiation of, testimony for or assistance in an action filed
23 or to be filed under the False Claims Act.

24 C. An employer who violates Subsections D through F
25 of this section shall be liable for all relief necessary to

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1 make the employee whole, including reinstatement with the same
2 seniority status that the employee would have had but for the
3 discrimination, two times the amount of back pay, interest on
4 the back pay, compensation for any special damage sustained as
5 a result of the discrimination and, where appropriate, punitive
6 damages. The defendant shall also be required to pay
7 litigation costs and reasonable attorney fees. An employee may
8 bring an action in the appropriate state district court for the
9 relief provided in this section.

10 D. An employee who is discharged, demoted,
11 suspended, harassed, denied promotion or in any other manner
12 discriminated against in the terms and conditions of employment
13 by the employee's employer because of participation in conduct
14 which directly or indirectly results in a false claim being
15 submitted to the state or a political subdivision of the state
16 shall be entitled to the remedies pursuant to Subsections G
17 through W of this section if:

18 (1) the employee voluntarily disclosed
19 information to a government or law enforcement agency or acted
20 in furtherance of a false claims action, including
21 investigation for, initiation of, testimony for or assistance
22 in an action filed or to be filed; and

23 (2) the employee had been harassed, threatened
24 with termination or demotion or otherwise coerced by the
25 employer or the employer's management into engaging in the

1 fraudulent activity.

2 Section 7. LIMITATIONS PERIOD--ACTIVITY PRIOR TO
3 EFFECTIVE DATE--BURDEN OF PROOF--ESTOPPEL OF DEFENDANT BY
4 GUILTY VERDICT. --

5 A. A civil action under the False Claims Act may
6 not be filed more than three years after the date of discovery
7 by the official of the state or a political subdivision of the
8 state charged with responsibility to act in the circumstances
9 or no more than ten years after the date on which the violation
10 of the False Claims Act is committed.

11 B. A civil action under the False Claims Act may be
12 brought for activity prior to the effective date of the False
13 Claims Act if the limitations period set in Subsection A of
14 this section has not lapsed.

15 C. In an action brought under the False Claims Act,
16 the state, any political subdivision of the state or the qui
17 tam plaintiff shall be required to prove all essential elements
18 of the cause of action, including damages, by a preponderance
19 of the evidence.

20 D. Notwithstanding any other provision of law, a
21 guilty verdict rendered in a criminal proceeding charging false
22 statements or fraud, whether upon a verdict after trial or upon
23 a plea of guilty or nolo contendere, except for a plea of nolo
24 contendere made prior to the effective date of the False Claims
25 Act, shall estop the defendant from denying the essential

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1 elements of the offense in any action that involves the same
2 transaction as in the criminal proceeding and that is brought
3 under the False Claims Act.

4 Section 8. OTHER REMEDIES. --The provisions of the False
5 Claims Act are not exclusive, and the remedies provided for in
6 that act shall be in addition to any other remedies provided
7 for in other law or available under common law. The False
8 Claims Act shall be liberally construed and applied to promote
9 the public interests.

10 Section 9. TIMELY SERVICE OF NOTICE. --

11 A. If a violation of the False Claims Act is
12 alleged or the application or construction of that act is in
13 issue in any proceeding in the supreme court of New Mexico, New
14 Mexico court of appeals or district court, the person or the
15 political subdivision of the state that commenced the
16 proceeding shall serve a copy of the notice or petition
17 initiating the proceeding and a copy of each paper, including
18 briefs, that the person or the political subdivision of the
19 state files in the proceeding within three days of the filing
20 on the attorney general.

21 B. Timely compliance with the three-day period
22 pursuant to Subsection A of this section is a jurisdictional
23 prerequisite to the entry of judgment, order or decision
24 construing or applying the False Claims Act by the court in
25 which the proceeding occurs, except that within that three-day

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[bracketed material] = delete

1 period or thereafter, the time for compliance may be extended
2 by the court for good cause.

3 C. The court shall extend the time period within
4 which the attorney general is permitted to respond to an action
5 subject to this section by at least the same period of time
6 granted for good cause pursuant to Subsection B of this section
7 to the person or the political subdivision of the state that
8 commenced the proceeding.

9 Section 10. SEVERABILITY.--If any part or application of
10 the False Claims Act is held invalid, the remainder or its
11 application to other situations or persons shall not be
12 affected.

13 Section 11. EFFECTIVE DATE.--The effective date of the
14 provisions of this act is July 1, 2005.